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INTER-STATE COMMERCE COMMISSION

BLANTON DUNCAN, COMPLAINANT.

——VERSUS——

THE ATCHISON, TOPEKA & SANTA FE' R. R. et al.

COMPLAINANTS BRIEF.

BLANTON DUNCAN, ATTORNEY.

LOUISVILLE, KY.
ORPHANAGE STEAM PRESS, PRINT.
* 1891. *

Inter-State Commerce Commission.

BLANTON DUNCAN, Complainant

Versus

The Atchison, Topeka & Santa Fe' R. R. Co.
The Atlantic & Pacific R. R. Co.
The Central California R. R. Co.
Known as the Santa Fe' System.
} Defendants

1. The defendants in this case are the largest Railroad Corporation in the world—their stock being about 103 million dollars and their bonded debt about 65 millions. Extending from Chicago to the Pacific, with various branches, it follows necessarily that its power for good or for evil must be vast. And yet the controllers of this great machine pervert its usefulness into criminal violation of the law; and making law only unto themselves, they persist in evasions and infractions of plain statutes, notwithstanding this high court has found them guilty.

The first point to be discussed is the charge, that the Santa Fe' and the ten other railroads, in an illegal combination, Trans-Continental Association, violate the "Act to regulate Commerce" by charging higher rates for the same freight eastward than they do westward, and in the specific case alleged, that the defendants demanded and received in January 1889, for a car load of household goods, from Louisville, Ky., to Los Angeles, Cala., $263, and subsequently in September 1889, without any change of tariff rates, they demanded and received $350 for almost the identical goods shipped from Los Angeles to Louisville, in contravention of the 2d and 3d sections of the act. The proof is presented and will not be denied by the defendents as to the two

shipments, and the charge and compelled payment of $87 more for the eastern than the western freight—33 per cent. excess. Is that "reasonable and just"? Now if there was any greater altitudes to overcome one way, or other obstacles and difficulties, there might be reason for an excess of charges. But in this case there is nothing of the kind. The road goes up and down the mountains along its route, equalizing the ascents and descents both ways, and the terminus at Los Angeles is from "400 to 800 feet altitude" and that of Louisville "500 feet". The difficulties of transportation are undoubtedly greater in the winter than in the summer, yet the cheaper rate was charged for the January trip in ten days–and the higher rate for the autumn trip in nineteen days. If the charge was to be made according to the *length* of this trip, the figuring was not accurately done.

The employees of this gigantic corporation have no option other than to do precisely what is ordered, and to follow out the rules laid down for their guidance. And so all these roads in combination have entered into a *conspiracy* against the public, to charge just such rates as they may choose to exact. Their action was such as the courts declared to be illegal, prior to the enactment of the Act by Congress, and was clearly set forth in the decision by the Kentucky Court of Appeals in Sayre vs. Lou. Union Association (1863) 1 Duval 146, the court said: " Mr. "Wharton, lays it down upon the authority of several cases, that "*Combinations* to prejudice the public, by unduly elevating or "depressing the price of wages, of tolls, or of any merchantable "commodity, are *indictable as conspiracies* (1 Am. C. L. 786). "And Mr. Chitty places *Conspiracies to injure public trade* upon "the same ground as conspiracies "to affect public health, to "violate public police, to insult public justice, or to do any act in "itself illegal." 3 Chit. Crim. Law 1139. * * *

"A common Carrier cannot, like a merchant or mechanic "consult his pleasure or caprice as to the conduct of his business. "The law makes it his duty, when he can conveniently do so, to "receive and carry goods for any person whatsoever for a *reasonable hire*. (Story on Bailments 508). The public interest does "not, we believe, forbid carriers from guarding themselves "against undue competition reducing freights below the stand-

"ard of fair compensation ; and we should hesitate to condemn "an agreement between carriers *not* to carry goods for less than a "certain *reasonable* price. But in the case under consideration the "*members agreed that no one should carry freight for less than the* "RATE FIXED *by the association*, without reference to the "question whether the rate was reasonable or not. We find "nothing in the charter from which it can be reasonbly inferred "that the Legislature meant *to authorize such a combination*."

It was pronounced "illegal and void." This is a case precisely in point. The views advanced by that court are almost identical with the decisions rendered by the Commission respecting carriers—and the *fixing a rate* was thus denounced as illegal by associations of carriers long before the existence of this huge syndicate of nearly a thousand millions of capital, which seeks by combination to control the freights of the Union and to despoil the public at will, The charge of 33 per cent excess on a car load eastward has no foundation in justice or right. They might just as well have made it 133 per cent. A table is shown, taken from their Tariff, in which discrimination is made upon other commodities by an excess of freight upon eastward bound. It is a matter of public notoriety that these roads carry thousands of empty cars eastward. They should be glad to get freight for them upon equal rates. And yet in 1889 they advanced the freights upon California fruits to $600 per car, making it impossible for many cultivators to ship at probabilities of realizing cost. This made such an outcry from the fruit growers, and the abandonment of Shippers, that these exorbitant rates were reduced. Complainant submits that there has been and still continues to be a gross infraction of law by the discrimination against Eastern localities on the part of this illegal combination, and refers further in regard to that to paragraph 3 of this brief, and the authorities therein given in support of these views.

2. Complainant shows, by evidence that cannot be denied, the rates fixed by this combination for a certain class of goods at —for example $3.95 per 100 pounds—$395 for 10.000 pounds, or $750 50 for 19,000 pounds when by the car load of 20,000 pounds the combination will ship through for $263 westward, or $350 eastward. For the 100 pounds or 10,000 pounds shipment the

rate is 3.95. For the car load of 20,000 at $263 the rate is 1.31½. Can there be the slightest justification for such an enormous excess? Three times the rate!! These corporations exceed anything in modern days in their cormorant practices. The merchant who pays rent, salaries &c. buys his goods at $1 wholesale, and retails them rarely at higher than an average of 20 per cent advance. Yet this Syndicate "fixes the rate", and charges 300 per cent for retail over the wholesale price!! the cost to the carrier *for carrying* the goods is the same, whether in small or large lots. This is directly in contravention ot the late decision of this court that higher rates charged to different shippers on the same class of goods contained in a car load—was illegal. But the combination goes farther, and orders the thousands of employees to insert in the bills of lading, that these goods are shipped at "owners risk"—"released"—and that for damage or loss they will only be responsible to the shippers for a total payment of $5 upon the 100 pounds! They have received 3.95 cash, for they generally insist upon prepayment, and refuse to ship until satisfied or guaranteed—and thus, as charged in the petition, this mammoth syndicate does encourage theft and spoliation, from the ease, with which any employee can *lose* any package that attracts his fancy. The company, in case it has found a shipper ignorant of law or his own rights, who signs the bill and makes a special contract—has only to return him his freight money 3.95 and 1.05 in payment of a package, which may be worth $100. Take the case of provisions, at a lower rate of freight $2—in case of loss the shipper would get for his $30 of butter only $3—for $14 worth of good hams the same price; and so on. There are tens of thousands of cases occurring, in which shippers are compelled to submit to losses, because they have not the time to fight a great corporation, with its numerous paid attorneys at huge salaries—nor have they the money to spend in such contests. It should be the high duty, and the greatest pleasure of this court, as one of the last bulwarks of the people against the encroachments of the Monopolies and Corporations—to hold the powerful and rich to a strict observance of law and the conditions, under which their franchises were granted. It is not "reasonable and just" to exact high freights from the public, and then to deceive the unwary

and simple minded by securing special contracts, releasing the carrier from proper performance of his duty, or strict compensation for losses, occassioned by his negligence. It is a clear case of fraud upon the part of anybody, who has strict obligations to perform, that he should seek to evade that responsibility by inducing the ignorant to sign away his rights. This court by publicly expressing opprobrium, for this manner of swindling shippers, can save thousands of otherwise future victims from the losses of their predecessors.

The carrier has a right to a fair price for safe shipments and careful supervision ; and *nothing more*. He is the insurer. He must give every attention and safeguard during transit. He cannot exact a higher price than the fair compensation on any ground—as there could be no consideration for the excess.

This Court is no doubt aware of the law on these points, but a few of the many decisions may be pertinent. It was the law as far back as Adams Express vs. Nock 2 Duv.565, "as public carriers "are bound to carry articles within their scope of business with- "out any other contract than such as the law would imply, if "owners will freely and understandingly make special contracts "less favorable to themselves, they can have no cause to com- "plain that the law will enforce them. But before the law "should do so, the proof must be clear, that such contract was "freely made and mutually understood."

Subsequently in Lou., Cin. & Lex. R. R. Co. vs. Hedger IX Bush 650 (1873) the Court said .

"In the case of the Adams Express Co., vs. Nock, this "Court in alluding to the Contract affecting merely the liability "of the carrier as insurer said, that analogy, principle and "authority now preponderate decidedly in favor of such contracts, "when fairly made, without duress, impositions, &c.," but no "such contract will ever be *implied* from the mere publication of "notice, that the carrier will exact conditions essentially variant "from those prescribed by law ; nor in a case of importunate "neceessity for immediate transportation and a refusal to carry "without a special contract—should the exaction of such a con- "tract be sanctioned. This liability should not be restricted "upon the implied assent of the owner of the goods, to be pre-

"sumed from the publication of notices, fixing the liability of the "carrier—but there must be evidence of an Express agreement, "either by a special contract entered into by the parties, or by a "knowledge of the restriction of liability contained in a public "notice on the part of the owner, and *his Express assent thereto*, "which is in effect a Special contract."

In Davidson vs. Graham 2 Ohio St. Rep. 133.

"If the carrier can release himself by contract for ordinary "negligence, he can also for *criminal neglect;* and in this way "assume no responsibility whatever. Such a ruling would dis- "pense with everything like diligence and honesty in the dis- "charge of these public duties, and be destructive of public "interests. No one undertaking such an employment *should be "allowed to contract so as to relieve himself against his own negligent "act; and in determing the question of negligence, public policy "requires that he should be held to extraordinary diligence."*

The same views were endorsed in Rhodes vs. L. & N. R. R. Co., IX Bush 691.

For many years the uniform decision in this Country has been as laid down in Robertson vs. Kennedy, 2 Dana, 431.

Hall vs. Renfro, 3 Met. 54.

Bland vs. Adams Express Co., 1 Duv. 233.

"Common carriers are accountable for goods they undertake "to carry, unless the loss or damage is occasioned by inevitable "accident, termed the act of God, or by the public enemy."

The latest decision in 1890 is that of Davis vs. Wabash, St. L. & P. R. Co., (Mo.) 1 S. W. 327–89, Mo. 340, that "the "common carrier of goods for hire is liable, even *without* negli- "gence on his part for all damages, except those resulting from "the act of God or the public enemy"—

In the face of this settled law, the common carriers of the West had all the Commercial circles in a ferment the past Autumn with a Bill of Lading, which virtually threw all the risks on the Shippers and permitted the carrier to collect his pay without responsibility. The effort of the Corporations is to own and control the Country—and this they will do, unless this Tribunal firmly and resolutely compels obedience to law.

In Mineral Point R. R. vs. Keep, 74 Am. Dec. 128, the Court wisely said :

"Corporations have vast powers, and privileges sufficient it "is supposed to enable them to carry out the objects for which "they are created. It would be neither just nor wise to bestow "upon them the additional immunity of exemption from the "observance of their contracts, or to deny to the people the usual "facilities of collecting their debts against them."

In Adams Express vs. Spalding, 21, Nov. 1888, Ky. Court of Appeals it was decided:

"The provisions of the contract in this case that the carrier "should not be liable for breakage of or injury to glass, or any "article of a fragile nature in any of the packages, which it "undertook to carry, *was void* as against public policy, being a "contract against liabilities, not only for ordinary negligence, "but for gross negligence."

And the latest decision in Ky., of Louisville & Nashville R. R. vs. Owen, 17 Dec. 1890, reiterates former views.

"Public carriers are bound to carry property within the "scope of their business, under such contracts as the law implies, "unless the shipper freely and understandingly enters into a "special contract. Therefore where the carrier undertakes to "carry property with the knowledge of its value, and the shipper "does not read a clause in the contract limiting the liability of "the carrier, and its conditions are not understood by him, or "suggested to him, he is not bound by the limitation."

Central R. R. vs. Combs, 70 Ga. 533. Blandford Justice said:

"You pay your money to go through and the Company "receiving it guarantees to you, that you shall go through safely; "it is an implied special contract, and it is not limited by any "statements written or printed on the check or ticket *not signed* "by the passenger."

The decisions in 1890 from various Courts show:

Southern Express Co. vs. Seide, (Miss.) 7 Sou. Rep. 547.

"A provision in a carrier's receipt that, if the value of the "goods delivered is not stated by the shipper at the time of "shipment and specified in the receipt, the holder will not "demand more than a particular sum for loss or damage, exempts "the carrier from greater liability *only* when the loss occurs "*without negligence* on its part and the *burden is on the carrier to*

"*show* absence of negligence."

Woodburn vs. Cin. N. O. & T. P. R'y Co. 40 Fed. Rep. 731.

"Where a release executed by a shipper provides for a com-
"plete and unconditional exemption of the carrier from liability
"on account of loss or damage to property in the course of trans-
"portation, *it is void*, as against public policy, and plaintiff is
"entitled to recover for the full value of the goods lost."

Chicago & N. W. R. R. Co. vs. Chapman, 24 N. E. 417—30 Ill. App. 504.

"A common carrier cannot by contract limit its liability for
"injury to property during transportation, caused by its gross
"negligence. It is liable for losses resulting from *its own* negli-
"gence, notwithstanding a stipulation in the bill of lading
"exempting it from such liability.

Weinberg vs. National S. S. Co. 8 N. Y. S. 195—57 N. Y. Supr. C. 586.

"A special contract exempting a carrier from liability for
"loss occasioned by negligence of its servants, does not exempt
the carrier from liability for its own negligence."

Penn. R. R. Co. vs. Weiler, 19 A. 702, 26 W. N. C. 27, following Grogan vs. Express Co. 7 A. 134.

"A stipulation in a bill of Lading, which provides that an
"*agreed valuation* shall cover loss or damage from any cause
"whatever, does not relieve the carrier from liability for the *actual*
"*value* of the goods, when their loss is caused by its negligence."

It is submitted that this Tribunal by an appropriate judgment shall protect the great mass of the people from the spoliation, which is attempted by this combination, and that the carriers shall be prohibited from exacting their enormous freights on fractional car loads, and at the same time swindling the shippers by obtaining releases given in ignorance of the individual's rights.

3—The defendants are charged with being in *conspiracy*, with an unlawful combination to evade and violate section 5 of the act to regulate commerce. When the spirit of an act can be so perverted as to accomplish indirectly the objects which law prohibits, it is just as much a violation of the act as if done directly. This combination of common carriers is for the purpose of pool-

ing and dividing earnings effectively, by upholding the price of freights among previously competing railroads; and the rules are so ironbound that after adoption and fixing of rates they can only be changed by the Chairman; or after a long period of notice by the railroads—only however by about a two third vote. These great corporations are determined to have their own way, and they are so bold as to form their combinations, and publish to the world the purposes of their associations. Under date of Nov. 27, 1890 the press dispatches gave their agreements and stated their intent to emasculate this tribunal, if possible. "It is "proposed to ask for an amendment to the Inter State Commerce "law, which will remove possible obstacles to the scheme. The "ground upon which the appeal is to be made is that only *by* "*pooling* can stability of rates be secured, and that only by *sta-* "*bility of rates* can discrimmination among shippers be prevented. "The abolition of the long and short haul clause will also be "asked."

A consolidation of Railroads is violative of all law, and yet these people are bold and daring enough to do anything, as can be seen from this dispatch. "Mr. Huntington replied, I am in "favor of a *consolidation, and have gone so far as to offer to consol-* "*idate.* I told the Atchison people *I was willing to combine all* "*our respective properties*, and let them decide on the name for a "joint company. The Atchison people have not accepted the "proposition, and I can't say if they will."

Still another dispatch gives, after discussing the buying of the Colorado Midland by the Atchison. "The full list of members "of the South-western Railroad and Steamship Association was "to-day learned for the first time. They are the Southern Pacific; "Missouri Pacific; St Louis Iron Mountain and Southern; Texas "Pacific; Missouri, Kansas and Texas; St Louis, Arkansas and "Texas; Kansas City, Fort Scott and Memphis; Atchison System; "Denver, Texas and Fort Worth; Mallory line of Steamers; "Morgan's La. and Texas Railway; Marman's line of Steamers; "Cromwell's line of Steamers.

"*All* the above are *ruled absolutely, in the rate matter, by a majority* "*of five members of the Executive Committee. Three of the* "*Executive Committee are* the immediate repesentatives of C. P.

"Huntington, Jay Gould and Allan Manvel."

It will thus be seen that in spite of legal decisions, uniformly against the legality of such combinations, and their rates as fixed and then upheld by 3 members of an Executive Committee—these 3 railroad magnates propose to defy this Tribunal, as well as the State and Federal Courts. Progressing rapidly, these lawbreakers finally assembled in New York and promulgated their "Agreement" on January 10, 1891, copy of which is filed with this brief. Their board under resolution 3 "shall have power to "establish and *maintain uniform rates between competitive points*". "If any officer or representitive of any company shall authorize "or promise directly or indirectly any variation from established "tariff, he shall be discharged from the service with the reason "stated".

This is about the substance of the rule governing the Trans-Continental. It is a *conspiracy* against the public, to prevent competition, to elevate tolls to the highest figure and *maintain* such rates as may extract the utmost possible profit from the pockets of the people.

By resolution fourth they make imperative the rates, "*That "the rates established* and *the policy adopted by the advisory Board*, "AT ANY TIME, *shall continue in force and be binding upon* ALL "*companies comprising the association, until altered by subsequent "action of the board:*

To show how ironbound the Association is to be, they provide for the almost *impossible* change of rules thus" Fifth—*that a vote "of* AT LEAST FOUR FIFTHS *of the members of the association shall "be required to make its action binding upon all.*

There were 13 Corporations in this conclave. To change any regulation made by the "Advisory Board it would require a vote of 11—10 not being four fifths—and so 3 Corporations could hold this alliance to any unjust and unreasonable rule.

They do not hesitate to declare their agreement to violate the Commerce act—Article 7, Sec. 1, to "enable each line to carry its "fair share of competitive traffic"—that is to say by pooling.

Sec. 2. "The Commissioners shall make an equitable divis-"ion thereof between the interested lines."

Art. 8, Sec. 2, " It is understood that concerning traffic, the

"competition for which is limited, two or more members hereof "the interested may *by agreement govern and control it, without the "intervention of any of the Agencies of this association.*"

Although law has declared and defined the rights of the Corporations as subordinated to the public interests, this is but another of the emphatic declarations "the public be damned."

Now as was said on a noted occasion.

"What are you going to do about it?"—

We may as well see what powers there are to curb and control and restrain these lawless men. The law under which this tribunal acts is quasi penal. All the ingenuity of the best paid legal ability will be directed to picking holes in the Statute, which threatens these Corporations.

In U. S. vs. Wiltberger, 5 Wheat. 95, Chief Justice Marshal said:

"Though penal laws are to be construed strictly, they are "*not* to be construed *so strictly as to defeat the obvious intention of "the Legislature.* * * The intention of the Legislature is to be "collected from the words they employ. Where there is no "ambiguity in the words there is no room for construction. The "case must be a strong one indeed which would justify a court in "departing from the plain meaning of words, especially in a penal "act, in search of an intention, which the words, themselves did "not suggest."

In U. S. vs. Hartwell. 6 Wall 395.

"The words must not be narrowed to the exclusion of what "the Legislature intended to embrace; but that *intention* must be "gathered from the words, and they must be such as to leave no "room for a reasonable doubt upon the subject. *It must not "be defeated by a forced and overstrict construction.* The rule does "not exclude the application of *common sense* to the terms made "use of in the act, in order to avoid an absurdity, which the "Legislature ought not to be presumed to have intended. * * * "The proper course in all cases is to adopt that sense of the words "which best harmonizes with the context, and promotes in the "fullest manner *the policy and objects of the Legislature.* The rule "of strict construction is not violated by permitting the words of "the statue to have their full meaning, or the more extended of

"two meanings, *as the wider popular, instead of the more narrow* "*technical one*; but the words should be taken in such a sense, *bent* "*neither one way nor the other, as will* BEST MANIFEST THE LEGIS- "LATIVE INTENT."

Can this tribunal have the slightest doubt as to what *was* "the Legislative intent".?

In Com. vs. Davis 12 Bush 240 it was ruled.

"There is no distinction, in Construing Statutes, between "those that are Criminal and penal and those that are civil; "but *all* are required to be construed alike, LIBERALLY, with a "view to carry out the intention of the Legislature."

And so in Parkinson vs. State 74 Am. Dec. 522—Penal laws are not to be so construed as to defeat obvious intention of Legislature.

And in Kellar vs. State 69 Am. Dec. 226—though they are not to be extended they should receive a rational construction.

Statutes should be so interpeted and construed *as to suppress the mischief, they were intended to correct and advance the remedy therefor.*

Mayor of Baltimore vs. Root 63 Am. Dec. 692.

In construing statute, intention of makers must be regarded, and what is within that intention *is within the statute, though not within the letter.*

Endlich on the interpetation of statutes §138 to 145 says.

"To carry out *effectually* the *object* of a statute, it must be so "construed, as to *defeat all attempts to do or avoid in an indirect or* "*circuitous manner that which* it has prohibited or enjoined.

See. Bac. Abr. Stat. J. Com. Dig. Parl. R. 28.

"*In fraudem legis facit, qui salvis verbis legis sententiam* "*circumvenit* 3 Dig. 1. 3. 29.; and a statute is understood as "extending to all such circumventions, and rendering them una- "vailing.

"*Quando aliquid prohibetur prohibetur et omne per quod* "*devenitur ad illud* 2 Just 48. When the acts of the parties are "adopted for the purpose of effecting a thing which is prohibited, "and the thing prohibited is in consequence effected, the parties "have done that which they have purposely caused, though they "may have done it indirectly.

(Per Blackburn J. in Jeffries vs. Alexander 31 L. J. Ch. 148 8 H. L. 594.)

"When the things done is *substantially* that which was prohi-
"bited, it *falls within the act*, simply because, according to the true
"construction of the statute, it is the thing thereby prohibited
"(per Lord Cranworth in Phillpot vs St. George's Hospital 6. H. L. 338 27 L. J. ch. 72.)

"Whenever Courts see *such* attempts at concealment they "brush away the cobweb varnish,' and show the transaction in its "true light (per Wilmot ch. J. in Collins vs. Blanturn 2 Wil. 349.)

"Whatever might be the form or color of the transaction, the "law looks to the *substance* of it (per Lord Tenterden in Solarte vs. Melville 1 Man. and Ry. 204.)

"They see things as ordinary men do, and *see through them* (per L. Brougham in Warner vs. Armstrong 3 M. and K. 45.)

Endlich says § 329 (as to Penal Statutes.)

"No construction is admissable which would sanction an "*Evasion* of an act; (or would defeat the obvious intention of the "Legislature) giving scores of authorities English and American—State and Federal. § 339. "All statutes are now construed with "a more strict regard to the language; and criminal statutes with "a more rational regard to the aim and intention of the Legislature than formerly. (In California strict construction is abolished by the Penal code—People vs. Soto 49. Cal. 69.)

"It yields to the *Paramount* rule, that every statute is to be "expounded according to the intent of them that made it; and "that *all cases within the mischief aimed at are to be held to fall "within its remedial influences.*"

Endlich quotes substantially the rule in all the states § 354 p. 495.

"In so far as the rights granted to corporations are destructive "of, or encroach upon public or common right, they are undoubtedly "to be construed most strongly against those setting them up, and "*in favor of the state or Public;* they are not to be extended beyond "the express words in which they are given, or their clear import; "and whatever is not given in unequivocal terms is to be deemed "as expressly witheld. See Note 178 for Authorities. (See Lord Coke's rules § 27 and 29.

Now in what does a Monopoly or a gigantic trust differ from the "Agreement" made by this Trans Continental Association, or that made on 10 January 1891?

Franchises are given for public benefit, not that the Corporation may clutch the people by the throat, and take all their earnings to fill up the Coffers of a few. When combinations are made by Railroads, primarily intended to be competitive, by means of which no other carrier can attempt to transport the Commerce of this Nation, the whole population is at the mercy of this Association, which can demand and compel the payment of whatever exorbitant rates it may fix. This tribunal must grapple with the lawbreaker and protect the people, or the time is not distant when the institutions of this Republic will be destroyed, and the liberties of its citizens lost.

The sentiment of this country as well as its legal decisions is against the creations of huge trusts.

In England a few weeks since the telegraph announced that "the Court of Queen's Bench has delivered a decision of import-"ance to all trusts and combinations for the purpose of *regulating* "*prices*.

"The case was that of a syndicate of bottlers, who had made "a mutual agreement to maintain a certain schedule of prices for "ten years. The Court holds that such an agreement is illegal "and cannot be enforced in a Court of law."

That was a small affair affecting slightly the public weal—In the case at bar it is far and deep reaching, embracing in the gigantic coils of a hundred headed hydra the whole Commercial and farming interests of the Union.

In Leslie vs. Lorillard 110 N. Y. 533 the Court said:

"Corporations are great Engines for the promotion of the "public convenience and for the development of public wealth; "and so long as they are conducted for the purposes, for which "organized, they are a public benefit, *but if allowed to engage* "*without supervision, in subjects of enterprise foreign to their char-*"*ters, or if permitted unrestrainedly to control and monopolize the* "*avenues to that industry in which they are engaged, they become a* "PUBLIC MENACE, *against which public policy and statutes design* "*protection*."

The R. R. Corporations of this country have 800,000 men in their Employment, subject almost absolutely to the orders of their Presidents. The bread of 4 millions of our population is dependent upon the will of the few men, who rule the soulless machines.

When such men pervert laws and coolly persist in infractions, after judgments of disapproval, the step is not far for them in Combination to change pervert into subvert—and with such an army to begin with, and the adherence of millions of others to the powerful influence of Plutus, it is not an exaggeration to say that the "PUBLIC MENACE" to-day stands confronting us with frightful proportions.

In Ward vs. Farwell 97 Ill. 593 the court said:

"Every private corporation undertakes and agrees, upon "condition of forfeiture, that it will exercise the rights and privi- "leges conferred upon it, in furtherance of the objects and "purposes of its creation, and not *otherwise;* and that it will so man- "age and conduct its affairs that it shall not become *dangerous or "hazardous to the safety or well being of the state or community* in "and with which it transacts business.

Selden Justice, in Bissell vs. R. R. 22 N. Y. 285.

"The contracts of corporations, which are *not authorized* by "their charters are *illegal*, because they are made in contravention "of public policy.

And the same in President, &c. vs. R. R. Co. 7 Lans 241.

In one of the late great Trust cases People vs. Chicago Gas Trust Co. 22 Chicago Legal News 108, 41 Albany Law Journal 58.

"The word 'unlawful,' as applicable to corporations, is not "used Exclusively in the sense of *Malum in se* or *Malum prohibi- "tum*. It is also used to designate powers which companies are "not anthorised to exercise, or contracts, which they are not "authorized to make or acts which they are not authorized to "do—such acts powers and contracts as are *ultra-vires*.

In the great sugar trust case People vs. N. Riv. Sug. Ref. Co. 24. N. E. Rep. 834. 25. Abb. N. C. 1. it was held that where a corporation enters into a partnership of independent corporations though the medium of a trust, *disregarding all statutory restraints as to the consolidation of Corporations* it is guilty of such violations of its Charter and such failure to perform its corporate

duties as renders it liable to dissolution.

☞Immediately on the discharge of the injunction these persons were so lawless as to go upon the same day into New Jersey, and renew their Trust, with $60 millions of Capital!!

All the decisions quoted show how unlawful the combination of these Railroad Corporations is, and has been for years. It was scarcely possible in the "act to regulate Commerce" to enumerate all the different shapes in which these Carriers might do something "unlawful." The power given to this tribunal was supervisory over the whole system, and to compel lawbreakers to desist, when cunning brains had created some schemes which the act had not expressly included. When State Courts and Federal Courts expound what is law—this Court can use its powers to prohibit the continued perversion of chartered rights. In the past year the Louisiana Courts have spoken in regard to agreements—in Texas and Pac. Rway. Co. vs. Southern Pac. Co. 6.

☞ Sou. Rep. 888. "An agreement by which two *competing* systems of railroads agree to divide their earnings for traffic between given points for which they were previously competitors, is against public interest, contrary to public policy, and cannot be judicially enforced."

The Evasion of the act, or the unlawful combinations can be punished under Sec. 10. (as amended.) The whole intent of Congress has been to prevent 'unlawful' acts by the carriers, and especially to prevent Monopolies. These carriers are doing precisely what the State and Federal decisions prohibit.

Electric Co. 9 Am. St. R. 82.

"Monopolies are favorites neither with Courts nor people.

"They operate in restraint of competition, and hence are as a "rule *detrimental to the public welfare.*

Richardson vs. Buhl 7 Rail. and Corp. Jour. 96. Free compe- "tition is the life of business; and all *combinations* among persons "or Corporations for the purpose of raising or controling the prices "of merchandise, or any of the necessaries of life are monopolies "and intolerable, and ought to receive the condemnation of all "Courts."

Is not the effort of these Combinations precisely in the line which is denounced? Is not the only logical sequence, that they

must enhance "prices," and necessaries of life"?

Similar views will be found in 86. Ky. 331; 41. Alb. Law Jour. 104; 11 Peters 567; 111. U. S. 766; 17 Minn. 372; 70 Mo. 69; 35 Ohio St. 666.

"Competition is the life of trade, and whatever destroys or "even *relaxes competition in trade* is injurious, if not fatal to it. "4 Denio 353 14 Wend. 19.

"An agreement by several firms not to sell *except with the consent of the majority* is a combination to enhance price and unlawful. 14 La Ann 168.

In Watson vs. the Companies 52 How 348—*held* that a combination between rival steamboat Captains for their "joint "or mutual benefit or account," whereby *Competition between them "was prevented, created a monopoly*, and so was "contrary to public policy and injurious to the public."

And so such a combination to "destroy competition' was held to be a *criminal conspiracy* under the Statute in People vs. Fisher 14 Wend 9.

See Bishop vs. Palmer 146 Mass. 469. Oregon vs. Winsor 20 Wall 64 67 and Alger vs. Thacher 19 Pick 51 'contracts in "restraint of trade expose the public to all the evils of Monopoly.

"And this is especially applicable to wealthy Companies and "large corporations, who have the means, unless restrained by "law, *to exclude rivalry*, monopolize business and engross the "Market."

As to railroads preventing competition see 40 Ga. 582; 43 Ga. 13; 36 N. J. Eq. 5: and Denver vs Company 15 Fed. Rep. 650.

Combinations of railroads to monopolize freight and carriage are illegal. Lord Campbell Ch. J. said in Hilton vs Eckersley 6 Ellis and Bl. 47.65. "We are to consider *what may be done under "it and what mischief may* thus arise."

And in 43 N. Y. 149 Justice Folger said: "The rule is that agree- "ments which in their necessary operation *tend to restrain natural "rivalry and competition and thus result in disadvantage* to the "public are against the principles of sound public policy and "void".

The Kentucky Court said the same thing in Anderson vs. Jett 41 Alb L Jour 104.

The controllers of these Corporations do not regard the fact that hundreds of decisions are against them. They go ahead with combinations, and thrust themselves into the politics of states, spending vast sums in bribery and corruption to foist their own creatures into the legislature, and into other places of power, wherein the tools carry out the orders of the masters. The objective point is supreme control, and to attain which one of the primary acts would be to form a vast consolidation, such as Mr. Huntington has expressed himself as proposing to the Atchison. In England that has been adjudicated upon, and Vice Ch. Wood, in Charlton vs. Ry 5 Jurist N. S. 1096. 1100, said: "An agreement that the profits and loss shall be brought "into one common fund and the net receipts divided, without the "authority of an act of Parliament, appears to me clearly and "palpably illegal; otherwise it might be that all the railways in "the kingdom might be collected into one vast joint-stock con-"cern".

It is but a short step from the illegal "Trans-continental" and the "agreement" of Jany. 10 to form this "vast joint-stock concern". Unless this Tribunal can see its way clearly to express the present popular will, whilst exercising the equally well defined principles of law—and so teach the rich, that there are some things, which cannot be bought or perverted, a combination of polities and wealth may yet destroy what the wisdom of a hundred years, and the blood and treasure of millions has vainly erected.

The 3d section of the act of July 2, 1890 strengthens the hands of this Tribunal "Every contract, combination in form of trust "*or otherwise*, or conspiracy, in restraint of trade or commerce "* * * is hereby *declared illegal*".

If this court should deem that the defendants have done acts which are "declared illegal" by U. S. law, it is submitted that the corporations should be ordered to cease their violations, and steps should be taken to punish them for past infractions.

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